

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

GERALD R. MILLER, Trustee of the)	
Bankruptcy Estate of Jimmy Morris,)	
)	
Plaintiff,)	
)	
v.)	Case No. CIV-06-1008-D
)	
LOVE'S TRAVEL STOPS &)	
COUNTRY STORES, INC.,)	
)	
Defendant.)	

ORDER

Before the Court is Defendant's Motion to Strike Plaintiff's Emotional Distress Damages, filed April 17, 2008 [Doc. No. 93]. Plaintiff has timely responded in opposition to the Motion.

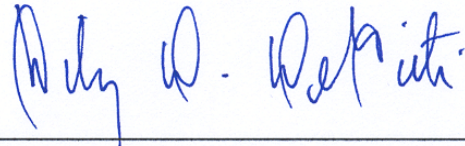
Defendant seeks an order striking "Plaintiff's claim for damages for emotional distress" based on arguments that such damages are not recoverable under the Age Discrimination in Employment Act, 29 U.S.C. § 621 *et seq.* (ADEA), and Plaintiff lacks proof of an emotional injury that would be compensable under his state law claim. Defendant does not identify the procedural basis of its Motion. Plaintiff contends the Motion is improper as a motion to strike under Fed. R. Civ. P. 12(f) and untimely as a dispositive motion. Plaintiff also contends the Motion lacks merit because emotional distress damages are recoverable if he prevails on his tort claim asserted under *Burk v. K-Mart Corp.*, 770 P.2d 24 (Okla. 1989), and its progeny.

By Order of April 21, 2008, issued after Defendant's Motion was filed, the Court ruled that Plaintiff can pursue a *Burk* tort claim in tandem with his ADEA claim. Under *Burk*, recoverable damages "are governed by statutory and common law principles of tort liability." *Id.* at 28 n.10. Oklahoma law permits the recovery in tort of damages for mental anguish and emotional distress upon proper proof. *See* Okla. Uniform Jury Instructions-Civ. 2d, No. 21.7 ("Wrongful Discharge

–Damages”); *see also Worsham v. Nix*, 145 P.3d 1055, 1071-72 (Okla. 2006) (mental pain and suffering is an element of damages for an actionable wrong).

IT IS THEREFORE ORDERED that Defendant’s Motion to Strike Plaintiff’s Emotional Distress Damages [Doc. No. 93] is DENIED.

IT IS SO ORDERED this 6th day of May, 2008.



TIMOTHY D. DEGIUSTI
UNITED STATES DISTRICT JUDGE